



**MINUTES – APPROVED 4-7-04**  
**SCOTTSDALE BOARD OF ADJUSTMENT**  
**3939 N. Drinkwater Boulevard**  
**Kiva at City Hall**  
**Scottsdale, AZ**  
**March 3, 2004**  
**6:00 PM**

**PRESENT:** James Vail, Chair  
Terry Kuhstoss, Vice Chair  
Jennifer Goralski, Board Member  
Carol Perica, Board Member  
Neal Waldman, Board Member  
Howard Myers, Board Member

**ABSENT:** Ernest Jones, Board Member

**STAFF:** Donna Bronski  
Kurt Jones  
Jayna Shewak  
Keith Neiderer  
Bill Erickson

**CALL TO ORDER**

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above. Chair Vail welcomed Howard Myers as a new member to the Board of Adjustment. He noted that Ernest Jones had also been appointed to the Board, but was unable to attend this evening and had been excused for this meeting. He stated that, due to health reasons, Commissioner Sands had retired from the Board. Chair Vail thanked him for his service. Chair Vail also

advised the Commissioners that coordinator for the Board, Beckye Frey, has been promoted and will be succeeded by Frances Cookson.

## APPOINTMENTS

1. Vote for Chair

**On motion made by Vice Chair Kuhstoss and seconded by Commissioner Waldman, Chair Vail was nominated to serve another term as Chair. The motion passed unanimously.**

2. Vote for Vice Chair

**Chair Vail nominated Vice Chair Kuhstoss for a second term. Commissioner Perica seconded the motion, which passed unanimously.**

## APPROVAL OF MINUTES

3. November 5, 2003

Commissioner Perica noted a correction on Page 4, second Paragraph: The applicant and Mr. Dale responded to the Board Member questions. **Vice Chair Kuhstoss moved to approve the minutes as amended. Commissioner Perica seconded the motion. The minutes were approved as amended by a vote of six (6) to zero (0).**

## REGULAR AGENDA

**CHAIR VAIL** explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment. He pointed out that, as one of the Commissioners was absent, he would be amenable to a request for a continuance from either of the two applicants, if they so desired.

4. **2-BA-2004 (Conley Residence)** request by Edward & Nadine Conley, applicant/owner, for a variance from Article V. Section 5.034.E regarding front yard setbacks for a 2.5+/- acre parcel located at 7008 E Ranch Road, with Single Family Residential, Environmentally Sensitive Lands, Foothills Overlay zoning (R1-70 ESL FO).

**MR. NEIDERER** presented the case per the staff packet. He reviewed the four criteria and pointed out the large wash entering the property. He stated that the flow rate is approximately 2100 csf, and that the wash comes close to bisecting the property. Mr.

Neiderer noted that staff had received two telephone calls asking for more information on the request.

**MR. NEIDERER** responded to Commissioner questions. Commissioner Myers asked Mr. Erickson to address the constraints placed on the lot with regard to drainage.

**MR. ERICKSON** stated that a wash with 2100 csf is a significant wash equating to a flow slightly less than that of the Indian Bend Wash. He noted that as such, it takes up considerable space. He went on to note the fragility of the desert and the significant vegetation currently existing in the wash. Mr. Erickson indicated the need for a floodwall to protect the residence and adjacent properties and to maintain the location of the wash in its natural state. He also stated that the building pad would need to be one foot above flood level, and the finished floor one foot above that.

**MR. CONLEY** addressed the Board and indicated his intentions to construct a floodwall as suggested by Mr. Erickson. He also noted that he had tried several different designs to fit the residence on to the lot in compliance with the zoning, but was unsuccessful due to the size and position of the wash. In response to a question by Chair Vail, he replied that he would work with the city and Mr. Erickson in resolving the matter.

There was discussion about the proximity of the proposed residence to Ranch Road in the event Ranch Road or other adjacent roads were extended in the future. Mr. Conley stated he had no objections to being 40 feet from the road in the event of an extension.

(Chair Vail opened public comment.)

**CHAIR VAIL** stated that he had received a comment card from John and Jan Lucose. They indicated that they did not wish to speak, but were concerned about access to the property, and that access would be infringing on neighboring properties. They also mentioned that the residence did not appear to fit in with the surrounding houses.

**MR. GEORGE BAKER, 6995 E. Ranch Road**, spoke to the variance request and expressed concern as to the 40 percent change in set back. He stated that the view from his home could be affected. He also noted that it was his understanding that the Conley lot was a key lot and as such was subject to fewer options.

**MS. DEBRA BAKER, 6995 E. Ranch Road**, commented that homes in the area range in size from 1800 to 3600 square feet and that all have managed to stay within the required set backs for their property. She also mentioned safety concerns related to visibility for vehicles traveling in the area.

**MR. CONLEY** responded that his was the only lot with a major wash, and thus prohibited him from building a home without the variance of a setback. He also noted that his territorial style home was similar to many in the area.

(Chair Vail closed public testimony.)

**COMMISSIONER PERICA** agreed that the variance was indeed a major one, but noted that the circumstances were different in Mr. Conley's situation. She observed that preservation of the wash and adherence to ESLO was critical. Commissioner Perica stated that she felt all four criteria had been met and that she would support the variance.

**VICE CHAIR KUHSTOSS** stated that she would move to deny the request, as the reason for the variance was a failure to work within the boundaries allowed by the city. She noted that the applicant was aware of the wash when he purchased the lot. Vice Chair Kuhstoss also pointed out that Ranch Road, and probably 70<sup>th</sup> Street, had the potential to be developed and that approval of the variance would be problematic with that impending development.

**CHAIR VAIL** remarked that he was troubled by the extent of the variance, but found comfort in the fact that the applicant was willing to work with the city. He indicated that the architect has room to work, and that perhaps the residence could be moved a little. He also referred to issues with future street development as a result of the requested setback.

**BOARD MEMBER WALDMAN** voiced agreement with Commissioner Perica, and stressed the importance of protecting the wash. In light of the character of the area, Commissioner Waldman commented that placing the house as proposed was an advantage. He stated his belief that the applicant had met all four of the criteria.

**COMMISSIONER GORALSKI** observed that this was, indeed, a difficult lot with which to work. She stated that it appeared to be the only lot that suffered this amount of wash, and that she didn't believe roads in the area would be a major impact. Commissioner Goralski stated that she was willing to support the request.

**BOARD MEMBER MYERS** stated that he has spent the last eight years working on ESLO and that protection of the washes and maintaining minimal building heights are critical. He observed that the lot is severely constrained, as the wash bisects the lot. He commended the applicant for planning a single level home in sensitivity to the neighbors' view corridors. Commissioner Myers stated that he felt the criteria had been met and that he would support the variance.

**Commissioner Myers moved to approve the requested variance. Commissioner Perica seconded the motion. The motion passed by a vote of four (4) to two (2), with Vice Chair Kuhstoss and Chair Vail voting "Nay".**

**CHAIR VAIL** explained that his "Nay" vote was based on the size of the infringement, but that he respected the fact that the applicant had limited the size of his residence to a one level residence of 3182 square feet.

5. **3-BA-2004 (Marmel Residence)** request by Jim Marmel, applicant/owner, for a variance from Article V. Section 5.104E regarding front yard setbacks on a .76+/- acre parcel located at 27684 N 66<sup>th</sup> Way with Single Family Residential, Environmentally Sensitive Lands, Foothills Overlay zoning (R1-43 ESL FO) zoning.

**MS SHEWAK** presented the case per the staff packet. She indicated staff's findings with regard to the four criteria. She indicated that there had been no public comment on this request.

**CHAIR VAIL** requested a definition of "key lot" Ms. Shewak replied that a key lot is one in which the rear lot of one lot forms the side yard of an adjacent lot. She pointed out that the applicant's rear lot forms the side yard of the lot next door. Ms. Shewak responded to questions from the Commissioners.

**MR. MARMEL**, the applicant, addressed the Board. He stated that he wished to provide a privacy wall, as the bedroom and bathroom were exposed to the street. He indicated that the builder had never informed him of any potential setback problems, and that his was the only home in the entire subdivision that cannot have any privacy on the side of the house with the bedroom and bath. Mr. Marmel read a letter from the neighbor who would be impacted most from construction of a privacy wall. The letter stated that the variance was in the best interests of the community, was consistent with the community, and would not interfere with his house in any way.

**VICE CHAIR KUHSTOSS** inquired as to whether the applicant had investigated any type of vegetative barrier. Mr. Marmel replied that he was restricted by CC&Rs from having vegetation higher than six feet or thick enough to buffer the street.

**COMMISSIONER MYERS** asked if the applicant had been given a plat map with the placement of the house on the lot. Mr. Marmel replied that he had not.

(Chair Vail closed public testimony.)

**COMMISSIONER MYERS** stated that he did not feel that the site created the problem, or that the desire for privacy satisfied any of the criteria. He pointed out that the community already has amended standards of 30 feet. He stated that he would not support the request.

**COMMISSIONER GORALSKI** echoed Commissioner Myers' statement. She stated her respect for the applicant's desire for privacy, and noted that the previously mentioned vegetative barrier might be the solution. She stated that she agreed with Commissioner Myers that the criteria had not been met.

**COMMISSIONER WALDMAN** noted that the master developer made the decision and perhaps redress could be directed to him. He stated that the request did not meet the criteria and that he must agree with his fellow Board Members and deny the variance.

**CHAIR VAIL** stated that he empathized with the plight of the applicant regarding his desire for more privacy. However, he explained that he could not justify the criteria relating to special circumstances, and therefore could not support the variance.

**VICE CHAIR KUHSTOSS** concurred that privacy is not a criteria under the Board's standards, and could not support the request.

**COMMISSIONER PERICA** concurred with her fellow Board Members that the request does not meet the requisite criteria.

**CHAIR VAIL** expressed hope that there might be an alternative with the wall in the back and the combination of a shorter wall on that side, with vegetation either in front of or behind that wall.

**MR. MARMEL** asked if the size of the setback was the problem and stated that, if so, he would be willing to compromise in that regard.

**CHAIR VAIL** indicated that his rationale for rejecting the request was based on the special circumstances applying to the other properties.

**VICE CHAIR KUHSTOSS** stated that she was alarmed by the extent of the requested change, but felt that the applicant had failed to meet the other three criteria as well.

**COMMISSIONER MYERS** agreed with Vice Chair Kuhstoss and commented that amended standards have already been applied to the subdivision. He also stated that varying setbacks for other properties are governed by individual circumstances.

**CHAIR VAIL** asked Ms. Bronski if the Board could postpone a vote and grant the applicant a continuance to return, work with staff and possibly amend the application.

**MS. BRONSKI** replied that it was at the Board's discretion to grant a continuance.

**CHAIR VAIL** stated that he would be willing to move for a continuance. Vice Chair Kuhstoss objected, noting that she had voted to deny the request based on all four criteria, not just the special circumstances. She indicated that she did not believe that anything would change to allow the situation to comply.

**CHAIR VAIL** moved to continue the case until April. Commissioner Waldman seconded the motion. The motion failed by a vote of two (2) to four (4), with Commissioners Perica, Goralski, Myers, and Vice Chair Kuhstoss voting "Nay".

**VICE CHAIR KUHSTOSS** moved to deny the application for not meeting the criteria as required. Commissioner Myers seconded the motion. The motion passed by a vote of five (5) to one (1), with Commissioner Waldman voting "Nay".

## **ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 7:20 PM.

Respectfully submitted,

"For the Record" Court Reporters